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SENATE BILL 1017

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Dede Feldman

AN ACT

RELATING TO MUNICIPALITIES AND COUNTIES; AMENDING SECTIONS OF THE DEVELOPMENT FEES ACT TO PROVIDE FOR WATER RIGHTS, TRANSPORTATION, LIBRARIES, COMMUNITY CENTERS AND SCHOOLS, CONSISTENCY WITH COMPREHENSIVE PLANS AND EFFICIENT DEVELOPMENT AND MEMBERSHIP ON CAPITAL IMPROVEMENTS ADVISORY COMMITTEES; REPEALING A SECTION OF THE NMSA 1978 REQUIRING GOVERNMENTAL ENTITIES TO PAY IMPACT FEES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 5-8-2 NMSA 1978 (being Laws 1993, Chapter 122, Section 2) is amended to read:

"5-8-2. DEFINITIONS. -- As used in the Development Fees Act:

A. "affordable housing" means any housing development built to benefit those whose income is at or below

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1 eighty percent of the area median income and who will pay no
2 more than thirty percent of their gross monthly income towards
3 such housing;

4 B. "approved land use assumptions" means land use
5 assumptions adopted originally or as amended under the
6 Development Fees Act;

7 C. "assessment" means a determination of the amount
8 of an impact fee;

9 D. "capital improvement" means any of the following
10 facilities that have a life expectancy of ten or more years and
11 are owned and operated by or on behalf of a municipality or
12 county:

13 (1) water supply, water rights, treatment and
14 distribution facilities; wastewater collection and treatment
15 facilities; and storm water, drainage and flood control
16 facilities;

17 (2) [~~roadway~~] transportation facilities
18 located within the service area, including roads, bridges, bike
19 and pedestrian trails, transit bus bays, rights of way, traffic
20 signals, landscaping and any local components of state and
21 federal highways;

22 (3) buildings for fire, police and rescue and
23 essential equipment costing ten thousand dollars (\$10,000) or
24 more and having a life expectancy of ten years or more; [~~and~~]

25 (4) parks, recreational areas, open space

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1 trails and related areas and facilities; and

2 (5) libraries, community centers and schools;

3 E. "capital improvements plan" means a plan
4 required by the Development Fees Act that identifies capital
5 improvements or facility expansion for which impact fees may be
6 assessed;

7 F. "county" means a county of any classification;

8 G. "facility expansion" means the expansion of the
9 capacity of an existing facility that serves the same function
10 as an otherwise necessary new capital improvement, in order
11 that the existing facility may serve new development. [~~The~~
12 ~~term~~] "Facility expansion" does not include the repair,
13 maintenance, modernization or expansion of an existing facility
14 to better serve existing development, including schools and
15 related facilities;

16 H. "hook-up fee" means a reasonable fee for
17 connection of a service line to an existing gas, water, sewer
18 or municipal or county utility;

19 I. "impact fee" means a charge or assessment
20 imposed by a municipality or county on new development in order
21 to generate revenue for funding or recouping the costs of
22 capital improvements or facility expansions necessitated by and
23 attributable to the new development. [~~The term~~] "Impact fee"
24 includes amortized charges, lump-sum charges, capital recovery
25 fees, contributions in aid of construction, development fees

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1 and any other fee that functions as described by this
2 definition. [~~The term~~] "Impact fee" does not include hook-up
3 fees, dedication of rights of way or easements or construction
4 or dedication of on-site water distribution, wastewater
5 collection or drainage facilities or streets, sidewalks or
6 curbs if the dedication or construction is required by a
7 previously adopted valid ordinance or regulation and is
8 necessitated by and attributable to the new development;

9 J. "land use assumptions" includes a description of
10 the service area and projections of changes in land uses,
11 densities, intensities and population in the service area over
12 at least a five-year period;

13 K. "municipality" means any incorporated city, town
14 or village, whether incorporated under general act, special act
15 or special charter, and H class counties, including any home
16 rule municipality or H class county chartered under the
17 provisions of Article 10, Section 6 of the constitution of New
18 Mexico;

19 L. "new development" means the subdivision of land;
20 reconstruction, redevelopment, conversion, structural
21 alteration, relocation or enlargement of any structure; or any
22 use or extension of the use of land; any of which increases the
23 number of service units;

24 M "qualified professional" means a professional
25 engineer, surveyor, financial analyst or planner providing

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1 services within the scope of his license, education or
2 experience;

3 N. "[~~roadway~~] transportation facilities" means
4 arterial or collector streets or roads that have been
5 designated on an officially adopted [~~roadway~~] transportation
6 plan of the municipality or county, including bridges, bike and
7 pedestrian trails, transit bus bays, rights of way, traffic
8 signals, landscaping and any local components of state or
9 federal highways;

10 O. "service area" means the area within the
11 corporate boundaries or extraterritorial jurisdiction of a
12 municipality or the boundaries of a county to be served by the
13 capital improvements or facility expansions specified in the
14 capital improvements plan designated on the basis of sound
15 planning and engineering standards; and

16 P. "service unit" means a standardized measure of
17 consumption, use, generation or discharge attributable to an
18 individual unit of development calculated in accordance with
19 generally accepted engineering or planning standards for a
20 particular category of capital improvements or facility
21 expansions. "

22 Section 2. Section 5-8-3 NMSA 1978 (being Laws 1993,
23 Chapter 122, Section 3, as amended) is amended to read:

24 "5-8-3. AUTHORIZATION OF FEE. --

25 A. Unless otherwise specifically authorized by the

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1 Development Fees Act and it is consistent with the
2 comprehensive plan, no municipality or county may enact or
3 impose an impact fee.

4 B. If it complies with the Development Fees Act, a
5 municipality or county may enact or impose impact fees on land
6 within its respective corporate boundaries.

7 C. A municipality and county may enter into a joint
8 powers agreement to provide capital improvements within an area
9 subject to both county and municipal platting and subdivision
10 jurisdiction or extraterritorial jurisdiction and may charge an
11 impact fee under the agreement, but if an impact fee is charged
12 in that area, the municipality and county shall comply with the
13 Development Fees Act.

14 D. A municipality or county may waive or reduce the
15 impact fee requirements [for] in order to encourage more
16 efficient development patterns and encourage affordable housing
17 projects. "

18 Section 3. Section 5-8-5 NMSA 1978 (being Laws 1993,
19 Chapter 122, Section 5) is amended to read:

20 "5-8-5. ITEMS NOT PAYABLE BY FEE. --Impact fees shall not
21 be imposed or used to pay for:

22 A. construction, acquisition or expansion of public
23 facilities or assets that are not capital improvements or
24 facility expansions identified in the capital improvements
25 plan;

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1 B. repair, operation or maintenance of existing or
2 new capital improvements or facility expansions;

3 C. upgrading, updating, expanding or replacing
4 existing capital improvements to serve existing development in
5 order to meet stricter safety, efficiency, environmental or
6 regulatory standards;

7 D. upgrading, updating, expanding or replacing
8 existing capital improvements to provide better service to
9 existing development;

10 E. administrative and operating costs of a
11 municipality or county except as provided in Paragraph (4) of
12 Subsection A of Section [4 of the Development Fees Act] 5-8-4
13 NMSA 1978; or

14 F. principal payments or debt service charges on
15 bonds or other indebtedness except as allowed by Section [4 of
16 the Development Fees Act] 5-8-4 NMSA 1978 [or

17 ~~G. libraries, community centers, schools, projects~~
18 ~~for economic development and employment growth, affordable~~
19 ~~housing or apparatus and equipment of any kind except capital~~
20 ~~improvements defined in Paragraph (3) of Subsection C of~~
21 ~~Section 2 of the Development Fees Act]. "~~

22 Section 4. Section 5-8-37 NMSA 1978 (being Laws 1993,
23 Chapter 122, Section 37) is amended to read:

24 "5-8-37. ADVISORY COMMITTEE. --

25 A. On or before the date on which the order,

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1 ordinance or resolution is adopted [~~under Section 19 of the~~
2 ~~Development Fees Act~~] pursuant to the provisions of Section
3 5-8-19 NMSA 1978, the governing body of a municipality or
4 county shall appoint a capital improvements advisory committee.

5 B. The advisory committee shall be composed of not
6 less than five members who shall be appointed by a majority
7 vote of the governing body. Not [~~less~~] more than forty percent
8 of the membership of the advisory committee [~~must~~] may be
9 representative of the real estate, development or building
10 industries. No members shall be employees or officials of a
11 municipality or county or other governmental entity.

12 C. The advisory committee serves in an advisory
13 capacity and shall:

- 14 (1) advise and assist the municipality or
15 county in adopting land use assumptions;
- 16 (2) review the capital improvements plan and
17 file written comments;
- 18 (3) monitor and evaluate implementation of the
19 capital improvements plan;
- 20 (4) file annual reports with respect to the
21 progress of the capital improvements plan and report to the
22 municipality or county any perceived inequities in implementing
23 the plan or imposing the impact fee; and
- 24 (5) advise the municipality or county of the
25 need to update or revise the land use assumptions, capital

1 improvements plan and impact fee.

2 D. The municipality or county shall make available
3 to the advisory committee any professional reports with respect
4 to developing and implementing the capital improvements plan.

5 E. The governing body of the municipality or county
6 shall adopt procedural rules for the advisory committee to
7 follow in carrying out its duties. "

8 Section 5. REPEAL. --Section 5-8-14 NMSA 1978 (being Laws
9 1993, Chapter 122, Section 14) is repealed.

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